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**CEBS**  
Committee of European  
Banking Supervisors  
**Brussels**

**Integrazione economica Europea (pos. 319-97)**  
**CEBS - Draft Public Statement of Consultation Practices**

The Italian Banking Association (ABI) views the creation of the CEBS with favour and interest, and hopes that it will rapidly begin operations as a consultative body of the European Commission in issuing the "third-level" legislation within the "Lamfalussy Process".

The observations set out below are intended as a contribution to the consultation on the "Public statement on consultation practices" released by the CEBS on 29 April 2004. Their aim is to clarify certain provisions, in order to make the consultation procedure delineated by the CEBS as responsive as possible to the needs and activities of intermediaries.

1. The statements drafted by the CEBS are taken over virtually entirely from those adopted by the Committee of European Securities Regulators (CESR) in December 2001. ABI agrees with this choice, which basically has the effect of aligning the consultation procedures of the EU Commission's two consultative bodies on, respectively, financial intermediation and banking intermediation. The approach averts the creation of different practices and conduct (on the part of the authorities and of the parties consulted) depending on whether the matter is within the scope of legislation on securities intermediaries and markets or that on banks and banking.
2. The formulation of the statements of the CEBS can usefully draw on the experience gained by intermediaries in consultations held by the CESR. More in general, it can be

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clearer about the scheduling and time allotted for exercises that the CEBS intends to conduct. In this sense:

- a) ABI agrees with the principle (taken over from CESR procedures) that "the Committee will publish an annual work programme indicating which parties it intends to consult on each area". However, it would be appropriate to indicate the month (or at least the period of the year) in which the programme is to be published, so as to permit the interested parties to organize their activities taking account of the CEBS's work agenda and the period of circulation of possible outputs;
- b) ABI agrees with the principle (it too taken over fully from the CESR procedures) that the CEBS will give the consulted parties "adequate time to respond, given the complexity of the issue and the time available". Nonetheless, again with a view to allowing the consulted parties to organize their other commitments so as to be able to respond to the CEBS's requests in the best way, it is appropriate to clarify that an "adequate" period of time cannot be shorter than 45 days. Specifying this would not unduly constrain the activity of the CESR, since it is envisaged that where it proves impossible to follow one of the consultation principles the CEBS can "publicly explain its reasons"; consequently, shorter time limits could be set for responses, provided that satisfactory reasons are given.
- c) Further on the time limits for consultations, ABI proposes that for "significant issues" the time limit be six months instead of the three now envisaged.
- d) Also taken over from the CESR's experience is the statement that "The Committee will consult for a second time if the response to the first consultation reveals significant problems or if revised proposals are radically different from the original proposals on which consultation was based".

In this regard, ABI points out that the most critical aspects thus far encountered by the CESR in its work are connected with the practice of provisional mandates. In effect, partly in order to meet the strict time limits imposed by the Commission for the issue of measures implementing a directive, the CESR receives a mandate to hold consultations before the final text of the primary legislation is available. This practice has some very delicate consequences. First and foremost among these is the fact that the CESR, at the technical level, often finds itself forced to "anticipate" (or take as certain) the policy choice that will be expressed in the directive when the Community institutions have not yet reached a final decision. This could lead to discrepancies between primary legislation and implementing measures, which should be avoided as far as possible.

Consequently, ABI proposes supplementing the statement in question with the provision that a second consultation will always take place following final approval of the primary legislation.

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- e) As regards point 7.v) of the document ("The Committee will establish consultative groups of experts where appropriate"), ABI underscores that the criteria for the selection of the experts need to be indicated.
- 3. ABI takes note of what is provided for at point 6 of the document ("In principle, the Committee will not consult on this work in the area of enhancing supervisory cooperation"), but asks that the CEBS nevertheless periodically update all interested parties on the state of progress of the work on this issue.

Yours faithfully,

  
THE GENERAL MANAGER  
(Giuseppe Zadra)



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